

STATE OF MICHIGAN  
COURT OF APPEALS

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WILLIAM GEORGE PHILLIPS,

Plaintiff/Counterdefendant-Appellee,

v

MARJORIE ANN PHILLIPS,

Defendant/Counterplaintiff-Appellant.

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UNPUBLISHED

February 15, 2000

No. 214829

Midland Circuit Court

LC No. 97-007225 DO

Before: Fitzgerald, P.J., and Saad and Whitbeck, JJ.

PER CURIAM.

Defendant appeals as of right from the trial court's judgment of divorce. Specifically, she challenges the trial court's disposition of the marital estate. We affirm.

I

We review a trial court's findings of fact for clear error. *Sparks v Sparks*, 440 Mich 141, 149-151; 485 NW2d 893 (1992). A finding is clearly erroneous if, after a review of the entire record, the reviewing court is left with the "definite and firm conviction" that a mistake was made. *Beason v Beason*, 435 Mich 791, 805; 460 NW2d 207 (1989); *Draggoo v Draggoo*, 223 Mich App 415, 429; 566 NW2d 642 (1997). If the trial court's findings of fact are upheld, then we must decide whether the dispositional ruling was fair and equitable in light of those facts, and we will affirm unless we have a firm conviction that the division was inequitable. *Sands v Sands*, 442 Mich 30, 34; 497 NW2d 493 (1993); *Sparks, supra* at 151-152; *Welling v Welling*, 233 Mich App 708, 709; 592 NW2d 822 (1999).

Defendant first contends that the trial court improperly invaded her separate assets and inequitably distributed the marital assets when it credited plaintiff with a \$50,000 adjustment to his obligation to defendant in the settlement. We disagree.

The goal in apportioning the marital estate is to reach an equitable division in light of all the circumstances. *Byington v Byington*, 224 Mich App 103, 114; 568 NW2d 141 (1997). To reach an equitable division, the court should consider a variety of factors, including the duration of the marriage,

each party's contribution to the marital estate, station in life, earning ability, age, health, needs, fault or past misconduct, and any other equitable circumstance. *McDougal v McDougal*, 451 Mich 80, 89; 545 NW2d 357 (1996); *Sparks, supra* at 158-160; *Byington, supra* at 114-115. While the parties need not receive mathematically equal shares, the court must explain any significant departure from congruence. *Knowles v Knowles*, 185 Mich App 497, 501; 462 NW2d 777 (1990). Although marital assets are subject to division, the court generally may not invade separate assets.<sup>1</sup> *Reeves v Reeves*, 226 Mich App 490, 494; 575 NW2d 1 (1997). However, the court should consider assets earned during the marriage as part of the marital estate. *Byington, supra* at 110.

The trial court made determinations regarding the parties' separate assets as required under *Reeves, supra* at 494; *Byington, supra* at 114 n 10. The trial court then ordered a deduction of \$50,000 to the sum due from plaintiff to defendant to settle the estate, stating that it found that a congruent division of the estate "was not fair and equitable in this case." The court found that because defendant was able to preserve her separate estate, and allow it to accumulate considerable value while plaintiff's separate estate was used for the marriage, fairness dictated that plaintiff, too, should get some benefit for the appreciation he forwent by contributing his separate assets to the marital estate. Thus, the court's departure from a congruent division of the estate was explicitly justified by the relative contributions of the parties to the marital estate, the circumstances of the parties, and general principles of equity.<sup>2</sup> *Sparks, supra* at 159-160.

We disagree with defendant's contention that the disposition constituted an invasion of her separate assets. Although the trial court's departure from a congruent disposition left defendant with a smaller separate estate following the decree of divorce than she would have enjoyed from an entirely congruent disposition, the disposition did not affect her separately held assets. We decline to hold that every incongruent disposition that works against a party with separate assets constitutes an invasion of those separate assets. We therefore conclude that the trial court's disposition of the appreciation of the home was fair and equitable.

## II

Defendant also contends that the trial court should have divided the approximately one hundred drawings and house plans plaintiff made for custom home clients. The trial court found, and the parties agreed, that the drawings could not be given a monetary value in their then current condition. We find no clear error in the court's determination of value. *Beason, supra* at 805; *Draggo, supra* at 429. The court awarded the drawings to plaintiff, in connection with his business corporation. At the hearing on defendant's motion to redefine the opinion, the trial court further clarified its conclusion and reiterated that it awarded the drawings to plaintiff because they were logically connected to the business. In light of these facts, we conclude that the court's disposition of the drawings was fair and equitable.

Affirmed.

/s/ E. Thomas Fitzgerald  
/s/ Henry William Saad  
/s/ William C. Whitbeck

<sup>1</sup> A spouse's separate estate can be opened for redistribution when one of two statutorily created exceptions is met. MCL 552.23 and 552.401; MSA 25.103 and 25.136. We need not consider the applicability of these statutes because we ultimately conclude that the trial court did not invade plaintiff's separate estate.

<sup>2</sup> We note that the court might have further justified the departure from congruence by considering the relatively more advanced age of plaintiff, his relatively fewer remaining years of employability, his lack of a retirement plan, and general principles of equity. *Id.*